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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-358

THOMAS CHARLES ATKINSON
200 Frenchy's Cove #10
Camarillo, California 93012

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory
Care Board of California (Board). She brought this action solely in her official capacity and is
represented in this matter by Bill Lockyer, Attorney General of the State of California, by Elaine
Gyurko, Senior Legal Analyst.

2. Thomas Charles Atkinson (Respondent) is representing himself in this
proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about February 14, 2005, Respondent submitted an application for
licensure to the Board. On or about November 9, 2005, the Board denied Respondent's

1 application. On or about November 15, 2005, respondent requested a hearing.

2 JURISDICTION

3 4. Statement of Issues No. S-358 was filed before the Board, and is currently
4 pending against Respondent. The Statement of Issues and all other statutorily required
5 documents were properly served on Respondent on March 13, 2006. Respondent filed his Notice
6 of Defense contesting the Statement of Issues. A copy of Statement of Issues No. S-358 is
7 attached as Exhibit 1 and incorporated herein by reference.

8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read and understands the charges and allegations
10 in Statement of Issues No. S-358. Respondent has also carefully read and understands the effects
11 of this Stipulated Settlement and Disciplinary Order.

12 6. Respondent is fully aware of his legal rights in this matter, including the
13 right to a hearing on the charges and allegations in the Statement of Issues; the right to be
14 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
15 against him; the right to present evidence and to testify on his own behalf; the right to the issuance
16 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
17 reconsideration and court review of an adverse decision; and all other rights accorded by the
18 California Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
20 each and every right set forth above.

21 CULPABILITY

22 8. Respondent admits the truth of each and every charge and allegation in
23 Statement of Issues No. S-358.

24 9. Respondent agrees that his Respiratory Care Practitioner License is subject
25 to denial, and he agrees to be bound by the Board's imposition of discipline as set forth in the
26 Disciplinary Order below.

27 CONTINGENCY

28 10. This stipulation shall be subject to approval by the Board. Respondent

understands and agrees that the Board's staff and counsel for Complainant may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect (except for this paragraph), it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Thomas Charles Atkinson be issued a conditional license to practice respiratory care, which shall be on probation to the Board for a period of two (2) years on the following terms and conditions:

1. WORK SCHEDULES Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

2. BIOLOGICAL FLUID TESTING Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the

1 Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire
2 probation period. The frequency and location of testing will be determined by the Board.

3 At all times, Respondent shall fully cooperate with the Board or any of its
4 representatives, and shall, when directed, appear for testing as requested, and submit to tests and
5 samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled
6 substances.

7 If Respondent is unable to provide a specimen in a reasonable amount of time from
8 the request, while at the work site, Respondent understands that any Board representative may
9 request from the supervisor, manager or director on duty to observe Respondent in a manner that
10 does not interrupt or jeopardize patient care in any manner, until such time Respondent provides a
11 specimen acceptable to the Board.

12 Failure to submit to testing or appear as requested by any Board representative for
13 testing, as directed, shall constitute a violation of probation, and shall result in the filing of an
14 accusation and/or a petition to revoke probation against Respondent's respiratory care
15 practitioner license.

16 3. ABSTENTION FROM USE OF DRUGS AND ALCOHOL Respondent
17 shall completely abstain from the possession or use of alcohol, controlled substances, dangerous
18 drugs, any and all other mood altering drugs, substances and their associated paraphernalia,
19 except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented
20 medical treatment.

21 Respondent shall execute a release authorizing the release of pharmacy and
22 prescribing records as well as physical and mental health records. Respondent shall also provide
23 information of treating physicians, counselors or any other treating professionals as requested by
24 the Board.

25 Respondent shall ensure that he is not in the presence of or in the same physical
26 location as individuals who are using illegal substances, even if Respondent is not personally
27 ingesting the drug(s).

28 Any positive result that registers over the established laboratory cutoff level shall

1 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition
2 to revoke probation against Respondent's respiratory care practitioner license.

3 Respondent also understands and agrees that any positive result that registers over
4 the established laboratory cutoff level shall be reported to each of Respondent's employers.

5 4. RESTRICTION OF PRACTICE Respondent may not be employed or
6 function as a member of a respiratory care management or supervisory staff during the entire
7 length of probation. This includes lead functions.

8 Respondent is prohibited from working in home care unless it is under direct
9 supervision and personal observation.

10 5. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
11 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
12 care in California.

13 Respondent shall notify the Board in writing within 14 days of any incident
14 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

15 6. QUARTERLY REPORTS Respondent shall file quarterly reports of
16 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
17 by the Board. Omission or falsification in any manner of any information on these reports shall
18 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition
19 to revoke probation against Respondent's respiratory care practitioner license.

20 Quarterly report forms will be provided by the Board. Respondent is responsible
21 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
22 year of probation and the entire length of probation as follows:

23 For the period covering January 1st through March 31st, reports are to be
24 completed and submitted between April 1st and April 7th. For the period covering April 1st
25 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
26 the period covering July 1st through September 30th, reports are to be completed and submitted
27 between October 1st and October 7th. For the period covering October 1st through December 31st,
28 reports are to be completed and submitted between January 1st and January 7th.

1 Failure to submit complete and timely reports shall constitute a violation of
2 probation.

3 7. PROBATION MONITORING PROGRAM Respondent shall comply
4 with requirements of the Board appointed probation monitoring program, and shall, upon
5 reasonable request, report to or appear to a local venue as directed.

6 Respondent shall claim all certified mail issued by the Board, respond to all notices
7 of reasonable requests timely, and submit Annual Reports, Identification Update reports or other
8 reports similar in nature, as requested and directed by the Board or its representative.

9 Respondent is encouraged to contact the Board's Probation Program at any time
10 he has a question or concern regarding his terms and conditions of probation.

11 Failure to appear for any scheduled meeting or examination, or cooperate with the
12 requirements of the program, including timely submission of requested information, shall
13 constitute a violation of probation, and will result in the filing of an accusation and/or a petition to
14 revoke probation against Respondent's respiratory care practitioner license.

15 8. PROBATION MONITORING COSTS All costs incurred for probation
16 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be
17 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and
18 conditions may also cause this amount to be increased.

19 All payments for costs are to be sent directly to the Respiratory Care Board and
20 must be received by the date(s) specified. (Periods of tolling will not toll the probation
21 monitoring costs incurred.)

22 If Respondent is unable to submit costs for any month, he shall be required instead
23 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
24 submit the costs including payment amount(s). Supporting documentation and evidence of why
25 the Respondent is unable to make such payment(s) must accompany this submission.

26 Respondent understands that failure to submit costs timely is a violation of
27 probation, and submission of evidence demonstrating financial hardship does not preclude the
28 Board from pursuing further disciplinary action. However, Respondent understands providing

evidence and supporting documentation of financial hardship may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for costs incurred.

9. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

10. NOTICE TO EMPLOYER Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement of Issues in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement of Issues in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he is aware of the

1 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
2 the Board to obtain additional forms, if needed. All reports completed by the employer must be
3 submitted from the employer directly to the Board.

4 Respondent shall execute a release authorizing the Board or any of its
5 representatives to review and obtain copies of all employment records and discuss and inquire of
6 the probationary status with any of Respondent's supervisors or directors.

7 11. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
8 notify the Board, and appointed probation monitor, in writing, of any and all changes of
9 employment, location, and address within 14 days of such change. This includes, but is not
10 limited to, applying for employment, termination or resignation from employment, change in
11 employment status, change in supervisors, administrators or directors.

12 Respondent shall also notify his probation monitor AND the Board IN WRITING
13 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for
14 mailing purposes, however the Respondent must also provide his physical residence address as
15 well.

16 12. COST RECOVERY Respondent shall pay to the Board a sum not to
17 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,729.00
18 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from
19 the effective date of this decision. Cost recovery will not be tolled.

20 If Respondent is unable to submit costs timely, he shall be required instead to
21 submit an explanation of why he is unable to submit these costs in part or in entirety, and the
22 date(s) he will be able to submit the costs including payment amount(s). Supporting
23 documentation and evidence of why the Respondent is unable to make such payment(s) must
24 accompany this submission.

25 Respondent understands that failure to submit costs timely is a violation of
26 probation, and submission of evidence demonstrating financial hardship does not preclude the
27 Board from pursuing further disciplinary action. However, Respondent understands that
28 providing evidence and supporting documentation of financial hardship may delay further

1 disciplinary action.

2 Consideration to financial hardship will not be given should Respondent violate
3 this term and condition, unless an unexpected AND unavoidable hardship is established from the
4 date of this order to the date payment(s) is due.

5 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
6 responsibility to reimburse the Board for these costs.

7 13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

8 Periods of residency or practice outside California, whether the periods of residency or practice
9 are temporary or permanent, will toll the probation period, but will not toll the cost recovery
10 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
11 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
12 Board, in writing, within 14 days, upon his return to California and prior to the commencement of
13 any employment where representation as a respiratory care practitioner is/was provided.

14 14. VALID LICENSE STATUS Respondent shall maintain a current, active
15 and valid license for the length of the probation period. Failure to pay all fees and meet
16 Continuing Education requirements prior to his license expiration date shall constitute a violation
17 of probation.

18 15. VIOLATION OF PROBATION If Respondent violates any term of the
19 probation in any respect, the Board, after giving Respondent notice and the opportunity to be
20 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
21 revoke probation is filed against Respondent during probation, the Board shall have continuing
22 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
23 modification of penalty shall be considered while there is an accusation or petition to revoke
24 probation or other penalty pending against Respondent.

25 16. COMPLETION OF PROBATION Upon successful completion of
26 probation, Respondent's license shall be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order, and I fully understand the terms and conditions and other matters contained therein. I understand the effect this stipulation will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the Respiratory Care Board.

DATED: April 22, 2006.

Original signed by: _____
THOMAS CHARLES ATKINSON
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: May 9, 2006.

BILL LOCKYER, Attorney General
of the State of California

Original signed by: _____
ELAINE GYURKO
Senior Legal Analyst
Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-358

THOMAS CHARLES ATKINSON
200 Frenchy's Cove #10
Camarillo, California 93012

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on July 5, 2006.

It is so ORDERED June 27, 2006.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA